

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.**

Cr. Bail Appln. No.S- 605 of 2013

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Date	Order with signature of judge.
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- 1.For orders on office objection as flag A.
- 2.For Hearing.

05.05.2015.

Mr.Habibullah G. Ghouri, counsel for the applicant.

Mr. Khadim Hussain Khoonharo, D.P.G

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**NAZAR AKBAR, J:** This bail application has been moved by the applicant only on the ground of statutory delay in Crime No.176/2010 of Police Station Shahdadt, registered under Sections 302, 324, 353 P.P.C.

The facts of this case have become irrelevant since the counsel for the applicant has not argued the grant of bail on merit therefore, to the facts relating to the proceedings of trial relevant to ascertain possibility of the benefit of statutory delay. The proviso (3) of section 497 Cr.P.C is as under:

“ Provided further that the Court shall, except where it is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail:

- (a) who, being accused of any offence not punishable with death, has been detailed for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded; or
- (b) who, being accused of an offence punishable with death, has been detained for such offence for a

continuous period exceeding two years and in case of a woman exceeding one year and whose trial for such offence has not concluded.”

The chronological facts to ascertain the delay are as follows:

1. Applicant/accused was arrested on 09.08.2010 and by now he is in jail for last more than 4 years and six months.
2. In the past, he moved bail applications on merits, before trial court which were turned down.
3. Then he approached this Court for grant of bail through Cr.Bail Appln. No.493 of 2012 which was rejected by this Court by a short order dated 26.08.2013 and the relevant part of the order is as follows:

“ In view of above, the instant bail application stands dismissed as not pressed. The trial Court is directed to conclude the trial preferably within period of two months. However, the applicant will be at liberty to repeat his bail application before trial Court on the ground of statutory delay, which shall be decided by the trial Court in accordance with law.”

3. Pursuant to the above order, the applicant on 27.10.2013 again approached the trial Court seeking bail on the ground of statutory delay, the same was also dismissed vide order dated 11.11.2013.
4. Finally, learned counsel for the applicant through this bail application is claiming bail on statutory delay. He has filed diaries of Sessions Case No.63 of 2011 from 08.01.2013 to 03.12.2013 and subsequent trial court diaries from 23.08.2014 to 28.10.2014.

Learned D.P.G has opposed this bail application however, he was not able to establish the delay in proceedings of the trial in Sessions Case No.63 of 2011 was on the part

applicant/accused. Learned D.P.G has attempted to argue that in most of the time the court was vacant.

I have gone through diaries and record which reveals that after the order of this Court dated 20.08.2013 in the earlier bail application the trial Court had been vacant and therefore the P.Ws were not appearing before the learned trial Court. This bail application is pending since 23.12.2013 and it is almost a year and five months and ever since it was filed and had the prosecution been serious even during pendency of this bail application, they could have reasonable progress in the trial to defeat the claim of accused under the statutory delay. Learned counsel has contended that the delay on account of the fact that the Court was vacant can not be attributed to the applicant. He has relied upon the case law reported as *Taj Muhammad and another v. The State* (2011 P.Cr.L.J 1910). The Single Bench of this Court in this case has held as under:

“In the present case, as stated above, the applicants were arrested on 17.7.2007 and charge was framed on 19.09.2009. Therefore, for 14 months they cannot, in any case, be considered to be responsible for delay in the trial. Even thereafter from 31.3.2010 to 29.10.2010 the case came up for hearing on as many as 16 occasions case was not proceeded for one reason or the other primarily, because either the accused persons were not produced or the Court was vacant or there was strike.”

He has also relied upon the case law reported as *Shabeer v. The State* (2012 SCMR 354). The honourable Supreme Court in this case has held as under:

“6. Having considered the submissions made before us by the parties’ counsel, we have also perused the newly added provision to section 497, Cr.P.C, vide Act VIII of 2011, which entitles an accused for enlargement on bail, after having remained in custody for a continuous period exceeding two years unless in the

opinion of the Court he was found responsible for causing delay during such period or he was a hardened, desperate or dangerous criminal or was accused for an act of terrorism punishable with death or imprisonment for life, which is not the position in the instant case.”

In the case in hand the perusal of diaries shows that delay can not be attributed to the accused and therefore, he has acquired a statutory right to be released on bail.

In view of the above facts and circumstances as well as the case law, the accused/applicant was admitted on bail by a short order dated 05.05.2015 and these are reasons for grant of bail by short order.

JUDGE

shabir